Criminal Revision No. 64 of 2003

Munsab Ali ------Revisionist.

V/s

State of Uttaranchal and others ------Respondent

Hon'ble Irshad Hussain, J.

This is a criminal revision against the order dated 05.04.2003 rejecting the application preferred U/s 319 of the Code of Criminal Procedure preferred by the State to summon the person named in the application and to array him as co-accused of the crime punishable U/s 376 of I.P.C. for which the other accused named in the F.I.R. and charge-sheeted was being tried before the learned Additional Sessions Judge, Haridwar.

Heard Sri Vivek Shukla learned Counsel for the revisionist and Sri K.S. Verma learned Counsel for the respondent and perused the material on record.

The reason to proceed against the another person and to array him as a co-accused was that the prosecution Mahrunisha (P.W.2) was able to identify that person after about two months of the occurrence when that person happened to pass in front of her house and on identifying him as another culprit she had told about him to her father and others. It is of significance that witness Munsab Ali (P.W.1), the father of the prosecutrix, did not support the said version in his statement and the about fact came on the record when the evidence of prosecutrix (P.W.2) was recorded and other witness followed suit. The F.I.R of the case was lodged on 12.03.2002 and statement of complainant P.W.1 was recorded on 01.11.2002. If her daughter had told him about the other culprit after two months of the occurrence, he could very well have named that person in his evidence. This shows that the claim was an after thought.

Further it is of significance that admittedly the broad features and profile of another culprit was neither given in the F.I.R. nor in the statements recorded under 161 Cr.P.C. and further that there

was no occasion to conduct test identification parade for this person so that he could have been as a result of the test identification parade, arrayed as co-accused in the said case. In view of these factors, the exercise to summon this person and array him as co-accused will be a mere futility causing more delay in the conclusion of the trial. In the trial Investigating Officer remains to be examined. Considering the totality of the facts and the circumstances of the case I am of the firm view that the learned Sessions Judge has rightly not accepted the contention of the prosecution to proceed against that other person and have him arrayed as co-accused and tried for the offence. Therefore, there is no substance and merit in this revision and the same is hereby dismissed.

(Irshad Hussain, J.)

July 16, 2003:
NCM